

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ADIB K TIMBUKTU,

Plaintiff,

Case No. 21-cv-0873-bhl

v.

ACCESSIBLE HOME CARE, et al,

Defendants.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE AND DISMISSING COMPLAINT FOR
FAILING TO STATE A CLAIM**

On July 26, 2021, Plaintiff Adib K. Timbukt, proceeding without counsel, filed a complaint. (ECF No. 1.) On August 3, 2021, Timbukt filed a motion for leave to proceed without prepayment of the filing fee. (ECF No. 4.) The Court has authority to allow a litigant to proceed without prepaying the filing fee if the Court determines that the litigant is unable to pay the costs of commencing the action and the action is not frivolous, fails to state a claim, or is brought against an immune defendant. *Cf.* 28 U.S.C. §1915(a)(1), (e)(2).

As for his indigency, Timbukt's motion indicates that he is unemployed and unmarried. (ECF No. 4 at 1.) He further states that he receives approximately \$950 in monthly income and that he has monthly expenses totaling approximately \$850. (*Id.* at 2–3.) Timbukt states he does not own a car or a home, and that he does not have a cash, checking, or savings account. (*Id.* at 3.) Upon review of his request, it appears that Timbukt is sufficiently indigent for a fee waiver.

The Court must also review the complaint for sufficiency. Under Fed. R. Civ. P. 8(a)(2), a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” The complaint must be at least sufficient to provide notice to each defendant of what he or she is accused of doing, as well as when and where the alleged actions

or inactions occurred, and the nature and extent of any damage or injury the actions or inactions caused.

Timbuktu's allegations do not state a plausible claim for relief. He names as defendants Accessible Home Care, Aarif Dahod (CEO of Accessible Home Care), and Luul Adam (a director at Accessible Home Care). (ECF No. 1 at 1.) Accessible Home Care appears to be a private medical care provider. Timbuktu alleges that the defendants and other unspecified health industry officials conspired to commit fraud by misappropriating United States Medicare/Medicaid funds. (*Id.* at 1–3.) Timbuktu alleges this conspiracy deprived Timbuktu of his medical benefits. (*Id.* at 1–2.) Timbuktu alleges the defendants therefore violated Timbuktu's First, Fourth, and Fifth Amendment rights under the United States Constitution. (*Id.* at 1.) Timbuktu claims, *inter alia*, that the defendants refused to provide an accounting of government payments made to Accessible Home Care, and that the defendants refused to transfer certain government assistance payments to Timbuktu. (*Id.* at 2.) Even reading these allegations generously, the Court is unable to discern any plausible basis for asserting these constitutional rights violations claims against these defendants. Accordingly, Timbuktu's complaint will be dismissed.

The Court will allow Timbuktu the opportunity to file an amended complaint, clarifying his allegations and describing plausible legal claims. If he decides to proceed with an amended complaint, Timbuktu should explain what legal violations the defendants committed, and how these violations caused injury to Timbuktu. Timbuktu is advised that claims regarding constitutional rights violations are generally only brought against government/state actors, and that, here, the named defendants appear to be private actors. Timbuktu is also advised that his amended complaint must include the docket number assigned to this case and must be labeled "Amended Complaint." The amended complaint supersedes the prior complaint and must be complete in itself without reference to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056-57 (7th Cir. 1998).

IT IS HEREBY ORDERED that Timbuktu's motion for leave to proceed without prepayment of the filing fee, ECF No. 4, is **GRANTED**.

IT IS FURTHER ORDERED that Timbuktu's complaint, ECF No. 1, is **DISMISSED without prejudice**. Timbuktu may file an amended complaint on or before **September 4, 2021**. If Timbuktu files an amended complaint, the amended complaint should explain what legal violations the defendants committed, and how these violations caused injury to Timbuktu.

Dated at Milwaukee, Wisconsin on August 5, 2021.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge